

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

IN RE DELTA DENTAL ANTITRUST
LITIGATION

This document relates to: ALL ACTIONS

CIVIL ACTION NO.

1:19-CV-06734

MDL NO. 2931

JOINT RULE 26(f) PLANNING REPORT

Pursuant to the Court’s minute entry dated July 30, 2020 (Doc. No. 298), the undersigned parties make the following joint submission pursuant to Federal Rule of Civil Procedure 26(f).

Procedural Background

Initial Filings: Between October 11, 2019 and November 7, 2019, eleven substantially identical class action complaints were filed in the Northern District of Illinois against the same group of Delta Dental defendants (“Defendants”). Pursuant to the Court’s Initial Case Management Order (“CMO”) (Doc. No. 95), a Consolidated Amended Complaint (“CAC”) was filed on November 26, 2019. Doc. No. 96. Thereafter, an additional seventeen class action complaints alleging substantially similar, but not identical, claims against the Delta Dental Defendants were subsequently filed in various jurisdictions, including four in this District.¹

¹ The complaints filed outside of the Northern District of Illinois are: *Obeng v. Delta Dental Plans Association, et al.*, Case No. 1:19-cv-25072 (S.D. Fla.); *Dickey v. Delta Dental Plans Association, et al.*, Case No. 3:19-cv-00910 (S.D. Miss.); *Mincy v. Delta Dental Plans Association, et al.*, Case No. 1:19-cv-00227 (N.D. Miss.); *Stephens v. Delta Dental Plans Association, et al.*, Case No. 2:19-cv-10576 (C.D. Cal.); *Mells v. Delta Dental Plans Association, et al.*, Case No. 3:19-cv-08182 (N.D. Cal.); *Braunstein v. Delta Dental Plans Association, et al.*, Case No. 3:19-cv-00915 (W.D. Ky.); *DeVinney v. Delta Dental Plans Association, et al.*, Case No. 3:19-cv-08258 (N.D. Cal.); *Kottemann Orthodontics, P.L.L.C. v. Delta Dental Plans Association, et al.*, Case No. 0:19-cv-03139 (D. Minn.); *Baldwin v. Delta Dental Plans Association, et al.*, Case No. 0:19-cv-03141 (D. Minn.); *Drs. Lutins & Benitz, P.A. v. Delta Dental Insurance Company, et al.*, Case No. 1:19-cv-01247 (M.D.N.C.); *Schwartz v. Delta Dental Plans Association, et al.*, Case No. 2:20-cv-00018 (E.D. La.); *Swiecinski v. Delta Dental Insurance Co., et al.*, Case No. 1:20-cv-03913 (D. New Jersey); and *Ben Zvi v. Delta Dental of New York*, Case No. 1:20-cv-05628 (S.D.N.Y.). The four additional complaints filed in this District are: *American Dental Association, et al. v. Delta Dental Insurance Co., et al.*, Case No. 1:19-cv-07909 (N.D. Ill.); *Endodontics of New Mexico*

Creation of the MDL: On December 13, 2019, certain plaintiffs filed a motion before the Judicial Panel on Multidistrict Litigation (“JPML”), seeking to centralize all related actions under 28 U.S.C. § 1407 for coordinated pretrial proceedings. On December 20, 2019, the District Court denied Defendants’ Motion to Stay further proceedings pending the JPML’s determination. Doc. No. 166. On March 27, 2020, the JPML created the instant multidistrict litigation (“MDL”). Doc. No. 264. All pending related cases are either now before this Court as part of the MDL or subject to a conditional transfer order.²

On January 27, 2020, Defendants filed a joint motion to dismiss the CAC. The Court denied that motion on September 4, 2020. Doc. No. 303.

The undersigned are in agreement that in order for this MDL to proceed in an orderly fashion, there must be one operative complaint that applies to all parties and all claims and one discovery schedule by which all parties must abide.

Quinn Emanuel Urquhart & Sullivan LLP and Wollmuth Maher & Deutsch LLP, designated as Interim Lead Counsel by the Court’s CMO, ask the Court to confirm that the CAC is the operative complaint for all purposes in this MDL and order that all other class action complaints filed in, or transferred to, this District as part of MDL 2931 are governed by the CMO and superseded by the CAC.

v. Delta Dental Insurance Company, et al., Case No. 1:20-cv-00798 (N.D. Ill.); *Deep and Daughtry, PC, et al. v. Delta Dental Insurance Co., et al.*, Case No. 1:20-cv-02124 (N.D. Ill.); and *Premiere Dental d/b/a Premiere Dental Spa, et al. v. Delta Dental Insurance Co., et al.*, Case No. 1:20-cv-03880 (N.D. Ill.).

² After the *Swiecinski* action was transferred to this Court, a notice of voluntary dismissal for that case was filed and entered on June 16, 2020. *Swiecinski*, Case No. 1:20-cv-02539 (N.D. Ill.) (Doc. No. 7). With regard to *Ben Zvi v. Delta Dental of New York*, Case No. 1:20-cv-05628 (S.D.N.Y.), Defendants filed a Notice of Potential Tag-Along Action with the JPML, which issued Conditional Transfer Order No. 3 (“CTO-3”). On August 18, 2020, the *Ben Zvi* plaintiffs filed a motion with the JPML seeking to vacate CTO-3. Defendants’ response to the motion to vacate was filed on September 8, 2020, and replies, if any, are due on September 15.

Defendants do not object to the CAC being deemed the only operative complaint for all purposes in this MDL or to the other complaints in this MDL being superseded by the CAC, but defer to the Court on how to most efficiently manage this MDL for purposes of consolidated discovery.

1. **Meeting.** Pursuant to FED. R. CIV. P. 26(f), a teleconference was held on September 8, 2020 and was attended for plaintiffs by Stephen Neuwirth and Leonid Feller, Quinn, Emanuel, Urquhart & Sullivan, LLP, and Ronald Aranoff, Wollmuth Maher & Deutsch LLP, and for Defendants by Britt Miller, Mark Ryan, and Daniel Storino, Mayer Brown LLP.

2. **Pretrial Schedule.**

a. **Amendments.** The last day for any party to amend pleadings (including adding additional parties) absent good cause shown shall be: **January 25, 2022**.

b. **Amendments to Schedule.** The deadlines included herein may be modified: (1) by Court order; (2) by the parties' joint written agreement, submitted to the Court for review and approved by the Court; or (3) by submitting a motion to modify the deadlines after making a good faith effort to meet and confer. The parties recognize that the COVID-19 pandemic may have a material effect on this litigation, including the dates provided herein, and they will work in good faith to address any challenges or delays that result therefrom.

3. **Discovery.**

a. **Discovery Orders.** Defendants and Interim Lead Counsel have been negotiating proposed discovery orders. By **September 30, 2020**, plaintiffs and Defendants will present to the Court (i) a proposed preservation order; (ii) a proposed protective order; (iii) a proposed ESI protocol; and (iv) any stipulation regarding non-discoverability of expert

communications and draft reports; such proposed orders/stipulations shall apply to all parties and all complaints consolidated in the MDL.

b. **Discovery Schedule.** The CAC alleges an antitrust action brought under 15 U.S.C. §§ 1, 15, and 26. Plaintiffs—on behalf of themselves and a putative class—allege that Defendants have engaged in anticompetitive conduct in violation of Section 1 of the Sherman Act. As such, discovery will be required with respect to class certification, liability, and damages. The undersigned have agreed to the attached proposed scheduling order. *See* Exhibit A.

4. **Settlement.** Given the nature and complexity of this case, the number of parties involved, and the early stage of the litigation, the parties believe that it is premature to discuss settlement.

5. **Consent.** The parties unanimously do not consent to proceed before a Magistrate Judge.

Dated: September 9, 2020

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2020, a copy of the foregoing Joint Rule 26(f) Planning Report was filed using the Court's CM/ECF system and thereby, all counsel of record were served via the CM/ECF system.

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Interim Co-Lead Class Counsel

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CIVIL ACTION NO.

1:19-CV-06734

MDL NO. 2931

[PROPOSED] SCHEDULING ORDER

It is hereby ORDERED as follows for all actions filed in or transferred to this Court as part of MDL No. 2931:

A. The Consolidated Amended Complaint (“CAC”), filed on November 26, 2019 (Doc. No. 96) is the operative class action complaint on behalf of all plaintiffs in this MDL. All other complaints filed in or transferred to as part of this MDL as of the date of this Order are hereby superseded by the CAC and no longer operative complaints.

B. Amendments.

- a. **Amendments.** The last day for any party to amend pleadings (including adding additional parties) absent good cause shown shall be: **January 25, 2022.**
- b. **Amendments to Schedule.** The deadlines included herein may be modified: (1) by Court order; (2) by the parties’ joint written agreement, submitted to the Court for review and approved by the Court; or (3) by submitting a motion to modify the deadlines after making a good faith effort to meet and confer. The parties recognize that the COVID-19 pandemic may have a material effect on this litigation, including the dates provided herein, and they will work in good faith to address any challenges or delays that result therefrom.

C. **Discovery Orders.** By **September 30, 2020**, the parties will present to the Court (i) a proposed preservation order; (ii) a proposed protective order; (iii) a proposed ESI protocol; and (iv) any stipulation regarding non-discoverability of expert communications and draft reports; such proposed orders/stipulations shall apply to all parties and all complaints consolidated in the MDL.

D. Defendants shall answer or otherwise plead in response to the CAC by **October 30, 2020**.

E. **Discovery.**

a. The parties shall present to the Court a joint stipulation and proposed order on production of transactional data/documents by **October 29, 2020**.

b. Disclosures pursuant to FED. R. CIV. 26(a)(1) to be made by **November 12, 2020**.

c. Absent good cause, motions to compel fact discovery shall be filed by **June 2, 2022**;

d. Subject to further Order of the Court, fact discovery is to be commenced in time to be completed by **July 1, 2022**.

e. **Fact Depositions**

1) Absent good cause shown, the maximum number of fact depositions, including depositions pursuant to Fed. R. Civ. P. 30(b)(6), per side is:

For Plaintiffs: 95 depositions inclusive of parties and third-parties.

For Defendants: 95 depositions inclusive of parties and third-parties.

2) No individual party shall be subject to more than ten (10) party depositions, including depositions pursuant to Fed. R. Civ. P. 30(b)(6).

F. **Class Certification.** The following schedule shall apply to motions for class certification:

- 1) The parties shall submit a joint proposal regarding page limitations on briefing for class certification motions and responses on or before **July 7, 2022**.
- 2) Plaintiffs shall file their motion for class certification and supporting memorandum and disclosures in support of class certification, and shall serve any class certification expert report(s) and, concurrently, any materials, data or information considered in forming the opinions contained in the report(s), on or before **August 4, 2022**.
- 3) Plaintiffs' class certification expert(s) shall be made available for deposition and deposited by **September 22, 2022**.
- 4) Defendants shall file oppositions to Plaintiffs' motion for class certification and supporting memorandum and disclosures in opposition to class certification, and shall serve any class certification expert report(s) and, concurrently, any materials, data or information considered in forming the opinions contained in the report(s), on or before **November 10, 2022**.
- 5) Defendants' class certification expert(s) shall be made available for deposition and deposited by **January 12, 2023**.
- 6) Plaintiffs shall file their reply in support of class certification and shall serve any rebuttal class certification expert report(s) and, concurrently, any materials, data and information considered in forming the opinions contained in the rebuttal report(s), on or before **March 9, 2023**. Rebuttal expert(s) shall be strictly limited to responding to new matters raised in the report(s) or in the deposition(s) of Defendants' class certification expert(s). Defendants reserve the right to seek a deposition of any such rebuttal expert(s).
- 7) The parties shall submit a joint proposal regarding page limitations on briefing for

Daubert motions for class certification experts and responses thereto on or before **April 20, 2023**. The Parties shall simultaneously serve *Daubert* motions for class certification experts challenging the other side's experts by **May 4, 2023**; *Daubert* oppositions shall be filed by **June 1, 2023**; and replies shall be filed by **June 15, 2023**.

- 8) The date for any hearing on Plaintiffs' motion for class certification shall be set by the Court upon completion of briefing.

G. Merits Experts, Dispositive Motions, Other Pre-Trial Matters. No later than 30 calendar days after the Court's ruling on the motion for class certification, the Parties shall meet and confer and provide to the Court a proposed amended Joint Case Schedule regarding the filing of dispositive motions, merits expert discovery, *Daubert* motions for merits expert reports, motions *in limine*, and other final pre-trial matters. To the extent the parties are unable to agree with respect to any aspect of the proposed amended Joint Case Schedule, the parties shall submit their respective positions on those aspects of the proposed order in a joint submission.

ENTERED: _____

HON. ELAINE E. BUCKLO